STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, Petitioner, and STATE OF IOWA and IOWA BOARD OF REGENTS, Intervenors.	Case No. 100825

DECLARATORY ORDER

This matter is before the Public Employment Relations Board (the Board or PERB) upon a petition for a declaratory order filed April 21, 2017 by United Electrical, Radio & Machine Workers of America (UE). The Board subsequently granted the joint petition for intervention of the State of Iowa and its Board of Regents, hereinafter collectively referred to as "the State." On June 2, 2017, following UE's filing of a brief, the parties presented oral arguments to the Board—Charles Gribble on behalf of UE and Jeffrey Edgar on behalf of the State.

UE is the parent of two employee organizations—UE Local 893/Iowa United Professionals and UE Local 896 (COGS)—which have been certified as the exclusive bargaining representatives of three bargaining units of the State's employees. Local 896 represents a unit of graduate and professional students employed at the University of Iowa, while Local 893 represents

units of State employees commonly referred to as the "science" and "social services" units.

The petition poses five questions concerning bargaining and interest arbitration in the wake of 2017 Iowa Acts, H.F. 291, for so-called non-public-safety units (*i.e.*, ones where less than 30 percent of the included employees are "public safety employees" within the meaning of H.F. 291 section 1). Four of the questions seek rulings on the negotiability status of hypothetical bargaining proposals set out in the petition and the fifth seeks a ruling on the ability of an Iowa Code section 20.22 interest arbitrator to consider the wage paid under the existing collective bargaining agreement in making a selection between the parties' offers on the impasse item of base wages for a successor agreement. UE poses the following questions:

Question 1. Whether the following proposal is a mandatory, permissive or excluded subject of bargaining:

> The employee organization is proposing an annual base wage of $50,000.00 for each employee,
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> A. per year beginning July 1, 2018 through June 30, 2019,
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> B. distributed in bi-monthly payments on the 1st and 15th of each month,
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> C. for working 8 hours a day, 40 hours per week,
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> D. with nine (9) holidays,
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> E. three (3) weeks' paid vacation,
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> F. ten (10) days paid sick leave,
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> G. time and a half for hours worked over 40 hours in a single week.

Question 2. Whether the following proposal is a mandatory, permissive or excluded subject of bargaining:

The employee organization has proposed an annual base wage for each employee in the bargaining unit as follows:

Employee A: $32,000.00
Employee B: $34,000.00
Employee C: $36,802.41
Employee D: $40,121.00
Employee E: $43,650.00
Employee F: $45,444.00
Employee G: $48,602.00
Employee H: $54,604.50
Employee I: $61,889.42
Employee J: $69,551.41

Question 3. Whether the following proposal is a mandatory, permissive or excluded subject of bargaining:

The employee organization represents employees in four different pay grades with pay grades one [sic] requiring the least amount of time on the job and pay grade four the most. Each increased step reflects one more year of service (there are no seniority rights) and annual base wage is as follows:

Pay Grade 1:
Year 1 - $30,000
Year 2 - $32,000
Year 3 - $35,000
Year 4 - $40,000
Year 5 - $46,000

Pay Grade 2:
Year 1 – $35,000
Year 2 - $38,000
Year 3 - $41,000
Year 4 - $45,000
Year 5 - $50,000

Pay Grade 3:
Year 1 - $40,000
Year 2 - $44,000
Year 3 - $48,000
Year 4 - $52,000
Year 5 - $56,000

Pay Grade 4:
Year 1 - $45,000
Year 2 - $49,000
Year 3 - $54,000
Year 4 - $60,000
Year 5 - $66,000

Question 4. Whether the following proposal is a mandatory, permissive or excluded subject of bargaining:

> The employee organization represents a group of employees working on a 11:00 p.m. to 7:00 a.m. work schedule established by the employer, for which it proposes an annual base wage of $55,000.00 with a one hour lunch break and two fifteen minute breaks.

Question 5.

> The employee organization, representing employees in non-safety bargaining unit and the public employer, have negotiated on the subject of "base wages" and have been unable to reach an agreement. The employee organization therefore has requested arbitration. The contract ending June 30, 2018 provides for an annual base wage for all employees of $45,000.00. The employers [sic] final offer at arbitration is an annual base wage of $35,000.00 for all the employees in the bargaining unit. The employee organization's final offer for arbitration is an annual base wage of $55,000.00 for all employees in the bargaining unit. The public employer states that the arbitrator cannot consider the employee organizations [sic] award since it is greater than the increase in the consumer price index and in any event is greater than 3%. The employee organization states that the arbitrator can neither consider or even be informed of base wages paid to employees under the expiring contract in that the law as amended provides:
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> > "The arbitrator shall not consider the following factors:
> > (1) Past collective bargaining agreements between the parties or bargaining that led to such agreements."
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> Thus, the employee organization states that neither side can rely on a collective agreement whose terms have expired. Thus, just as the employer is free to ignore the prior agreement and offer a wage substantially less than the employees were

> receiving, the employee organization is free to propose a substantially greater base wage. To hold otherwise would require the arbitrator to look at the wages paid in the past collective bargaining agreement which the arbitrator specifically is precluded from doing. To hold otherwise would mean that the terms of a contract that had expired in June of 2018 absent voluntary agreement limit the wages that an arbitrator could award and an employee could receive in perpetuity. In other words, the ending base wage rate in the June 30, 2018 contract would be the starting point for the consideration of every wage rate thereafter be it twenty-five or fifty years in the future.
>
> The question posed is may the arbitrator look to the past collective bargaining agreement, the one expiring June 30, 2018 and consider the wage paid in past collective bargaining as consideration for an award on base wages.

UE argues that all four of the proposals are mandatorily negotiable as base wages and that the arbitrator cannot consider the existing agreement in making a base wage award. The State argues that the Board should decline to issue a declaratory order on the first four of the questions.

Should a declaratory order be issued?

Both Iowa Code section 17A.9 and PERB rule 621—10.9 provide that the Board may refuse or decline to issue a declaratory order when a petition has been filed. Specifically, PERB subrule 621—10.9(1) provides:

> **621—10.9 (17A,20) Refusal to issue order.**
>
> **10.9(1)** The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:
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> *a.* The petition does not substantially comply with rule 621—10.2(20).
>
> *b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board's failure to issue a declaratory order.
>
> *c.* The board does not have jurisdiction over the questions presented in the petition.
>
> *d.* The questions presented by the petition are also presented

in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities who have not joined in the petition, intervened separately or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

The State argues that we should decline to issue a declaratory order on questions 1-4 on the grounds provided by paragraphs *d* and *e* of this subrule because issues presented by those questions have been decided in recent negotiability rulings or are involved in other pending proceedings.

Since the effective date of the H.F. 291 amendments to chapter 20, we have issued rulings in four separate negotiability proceedings—*State of Iowa (Board of Regents) and UE Local 896/COGS,* 17 PERB 100815 (unpublished); *State of Iowa (Dept. of Admin. Servs.) and AFSCME Iowa Council 61,* 17 PERB 100813 (unpublished); *Columbus Cmty. Sch. Dist. and Columbus Educ. Ass'n,* 17 PERB 100820, and *Oskaloosa Cmty. Sch. Dist. and Oskaloosa Educ. Ass'n,* 17 PERB 100823. *Columbus* and *Oskaloosa* were final rulings on those

parties' negotiability disputes, but in the two *State of Iowa* cases we issued only unpublished preliminary negotiability rulings, without analysis, on the many proposals at issue in those cases.[1]

While our rulings in these cases may have at least provided clues, if not complete answers, as to how we would view the negotiability of some of the proposals presented here, some of the proposals present issues either not directly presented in those cases or issues which were addressed only in preliminary rulings which provided parties with no real explanation for the conclusion we reached.

Upon our initial reading of the petition, which was filed prior to the issuance of our rulings in *Columbus Cmty. Sch. Dist.*, 17 PERB 100820, and *Oskaloosa Cmty. Sch. Dist.*, 17 PERB 100823, we questioned whether declaratory orders should be issued on questions 2, 3 and 4 because they were unclear or did not include sufficient facts necessary for us to apply our earlier rulings to the questions presented. However, during oral arguments UE sufficiently clarified the facts underlying two of these questions, providing us with sufficient information to issue declaratory orders on them. Additionally, even if a ground for possible refusal to issue a declaratory order exists, it does not mean that we must refuse to answer. *See, e.g., UNI-United Faculty*, 12 PERB 8502 (5/30/12) at 4. Consistent with the Iowa Code chapter 17A general policy of facilitating and encouraging the issuance of

[1] In Case No. 100813 both the State and AFSCME have requested final rulings on most of the proposals presented, but no final rulings have yet been issued in that case.

reliable advice by agencies, and in view of the clarifications provided by UE, we will therefore answer four of the questions posed by the petition, cognizant of the fact that should we refuse to do so UE would be free to file a new petition which eliminated the grounds for the refusal.

Discussion

Question 1

In *Columbus*, we defined the new section 20.9 bargaining subject of "base wages" as meaning the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance pay or longevity pay. *Columbus* at 5. We continue to subscribe to that definition.

Paragraph 1 of the proposal at issue here seeks an annual base wage of $50,000 for each employee. It thus contemplates the same base wage for all job classifications included within the affected bargaining unit, and is a mandatory subject of bargaining.

Subparagraph A specifies that the proposed base wage is "per year." Although redundant in view of the paragraph 1 specification that the proposed base wage is "annual," proposals for base wages which are expressed in terms such as an hourly wage or annual salary are fundamental to the topic itself and are, like the dollar amounts proposed, mandatory as "base wages."

Subparagraph A also specifies the dates between which the proposed base wage would be in effect. PERB has long held, even under the broader

scope of mandatory bargaining contained in the pre-H.F. 291 statute, that the duration of the collective agreement is a permissive subject of bargaining. *See, e.g., Southeast Polk Cmty. Sch. Dist.*, 79 PERB 1423 & 1428 (holding that contract duration is a permissive subject of bargaining and that the chapter 20 scheme calls for a one-year contract in the absence of the parties' agreement to the contrary). Neither party is under a duty to negotiate the duration of the collective agreement.

However, we do not view subparagraph A as an attempt to bargain on the contract's duration. Although it contemplates a contract with a one-year duration, one could hardly argue that a proposal that employees be paid a $25,000 base wage for the first six months of a contract's term, increasing to $26,000 for the agreement's final six months, is a duration proposal rather than a base wage proposal. While the inclusion of dates in subparagraph A of this proposal strikes us as unnecessary since the proposal seemingly contemplates a one-year successor agreement, it does not render subparagraph A permissive. Its predominant characteristic is not the duration of the contract, any more than is a proposal that employees be paid a specified base wage "for the duration of this agreement." Subparagraph A is thus a mandatory subject of bargaining.

Subparagraph B would require that employees' base wages be distributed bi-monthly on the first and fifteenth days of each month. Bargaining as to the subject of "wages" encompasses all of the fundamental aspects of wage payment, such as the time and place thereof. *Waterloo*

Cmty. Sch. Dist. v. PERB, 650 N.W.2d 627, 634 (Iowa 2002). The same reasoning applies equally to the payment of base wages. Subparagraph B is accordingly a mandatory subject of bargaining.

In both *Columbus* and *Oskaloosa* we took pains to emphasize that while the subject of "job classifications" was merely a permissive subject of bargaining for non-public-safety units and that the employer is under no obligation to bargain over whether a given job classification will exist, once the employer creates or maintains a classification in which bargaining unit members may be or are employed, it has a mandatory duty to bargain the base wage for that classification. *See Columbus*, 17 PERB 100820 at 9-10 and *Oskaloosa*, 17 PERB 100823 at 6-7. We thus anticipate that the initial bargaining positions of employee organizations will likely include base wage proposals for the classifications which the employer is maintaining under the existing agreement. When confronted with an initial bargaining position for base wages which contemplates the continuation of the existing classifications, the employer's section 20.9 duty to bargain in good faith requires the employer to either affirm that those classifications will exist, or to inform the employee organization which classifications it will eliminate or create. Without such information, the employee organization is unable to rationally and meaningfully bargain over base wages for all of the employees it represents.

UE argues that subparagraphs C, D, E, F and G of the proposal are mandatory as base wages because they establish the amount of work to be

done in exchange for an employee's base wage, and are thus essential components of any base wage proposal. Subparagraph C specifies the number of hours in a working day and week; subparagraph D the number of holidays which will be granted; subparagraph E the amount of paid vacation employees will receive; subparagraph F the amount of an employee's paid sick leave and subparagraph G the wage rate for hours worked in excess of 40 per week. These are matters squarely within the meaning of the now-permissive subjects of "hours," "holidays," "vacations," "leaves of absence" and "overtime compensation."

UE maintains, however, that these matters must be viewed as coming within the subject of base wages, relying on language in *Waterloo Educ. Ass'n v. PERB,* 740 N.W.2d 418 (Iowa 2007) (*Waterloo II*). In *Waterloo II,* while discussing the negotiability of an overload pay proposal applicable to teachers who taught more than 300 minutes per day, the Court cited with approval a decision of the Oregon Employment Relations Board which opined that "[i]t is only possible to rationally bargain for 'an honest day's pay' if one can also negotiate the boundaries and the content of 'an honest day's work.'" *Waterloo II,* 740 N.W.2d at 430, *citing Oregon Pub. Employees Union v. State of Oregon,* 10 PECBR 51 (July 1987).

This view was consistent with the pre-H.F. 291 scope of bargaining where hours, holidays, vacations and leaves of absence, as well as wages in the broader sense, were mandatory subjects of bargaining. But in the wake of H.F. 291, hours, holidays, vacations and leaves of absence are now

permissive matters not within the scope of the mandatory subject of "base wages" and an employer is under no obligation to bargain them.

This does not mean that an employee organization is required to bargain base wages in a vacuum, completely unaware of the extent of the work which is to be required of employees in exchange for their base wages. PERB has long held that the duty to bargain in good faith carries with it an obligation on the employer's part to supply the certified employee organization with information which may be relevant to bargaining. *See, e.g., Washington Educ. Ass'n,* 80 PERB 1635. This principle has been accepted by our Supreme Court in *Greater Cmty. Hospital v. PERB,* 553 N.W.2d 869, 871 (Iowa 1996). We think the duty to bargain in good faith requires that an employer presented with proposals which are premised on the existence of certain conditions of employment has an affirmative obligation to inform the employee organization if the premises of its proposal are not accurate, just as is the case when the issue is what job classifications the employer will establish or maintain.

Consequently, when confronted with a proposal such as is set out in Question 1, the employer has the good faith duty to indicate whether it will exercise its discretion over these quantity-of-work-related permissive topics in the manner contemplated by the employee organization's proposal or not. If not, the employer's obligation to bargain in good faith requires that it inform the organization whether those conditions of employment will exist at all for the term of the agreement being negotiated, and if so, the quantity or

extent of those the employer will provide in its discretion. Only when it knows "the content of an honest day's work" will the employee organization be in a position to knowledgeably and rationally bargain employee base wages.

Subparagraph G, however, would require the employer to pay time-and-one-half for hours worked over 40 in a single week. This is a matter squarely within the now-permissive subject of overtime compensation. But unlike the topics addressed by subparagraphs C-F, the rate at which employees are to be compensated for work beyond that required in exchange for their base wages is not related to the extent of the work required and is not something the employee organization must know in order to rationally bargain base wages.[2]

Subparagraphs C through G are permissive subjects of bargaining.

Question 2

The proposal at issue here contemplates the existence of a 10-employee bargaining unit, each of whom would receive a different base wage should the proposal become part of the collective agreement.

Inherent in the definition of base wages which we adopted in *Columbus* and also applied in *Oskaloosa* is the idea that mandatorily

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[2] This is not to suggest that an employer's duty to provide requested information to a certified employee organization is limited to situations where an employee organization's proposal is premised on assumptions concerning the quantity of work required or other permissive subjects, such as job classifications. PERB's longstanding and broad standard concerning the required disclosure of information may well require an employer to provide requested information under other circumstances as well.

negotiable base wages are negotiated on a job classification-by-job classification (rather than an employee-by-employee) basis. When asked about the job classifications of the employees contemplated by the proposal during oral arguments, UE replied only that they are not all in the same classification. But we do not know whether each employee occupies a classification separate and distinct from all the other employees, or instead whether some are in the same classification while others are not—facts central to our determination of whether the proposal comes within the meaning of "base wages."

Were it clear that all the employees were in the same job classification, or that all were in distinct classes, we think our ruling would be obvious on the basis of *Columbus*. But absent such information, we decline to answer the question posed because the facts presented, even as clarified somewhat during oral arguments, are insufficient as a basis upon which to issue a declaratory order.

Question 3

Although this question is posed in terms of "pay grades" based on one's "amount of time on the job," at oral arguments UE clarified that the four "pay grades" shown by the proposal reflect different job classifications—for instance Social Worker I, II, III and IV. Thus understood, the proposal contemplates what UE argues are five different base wages for employees in each distinct job classification, based upon their years of service.

As we indicated in *Columbus* and repeated in *Oskaloosa,* while the existence of a given job classification is merely a permissive subject of bargaining over which the employer has no duty to bargain, the base wage (*i.e.,* the minimum wage or salary, exclusive of additional pay) for each classification created or maintained by the employer is a matter of mandatory bargaining.

Consequently, it is within the employer's prerogative to decree whether a classification or classifications (such as a Social Worker classification or series of classifications) will exist, but that if an employer agrees or unilaterally determines that a classification or classifications are to exist, the minimum salary for each (*i.e.,* the "Year 1" step) is mandatorily negotiable. The remainder of the proposal is a permissive subject of bargaining.

Question 4

The facts set forth in the petition concerning this question, like those underlying questions 2 and 3 above, were insufficient as a basis upon which to issue a declaratory order because they did not reveal whether the employees shared a common job classification or occupied differing classifications, or whether other employees in the bargaining unit are also employed in the classification or classifications.

At oral arguments, however, UE clarified the facts sufficiently to provide us with an adequate factual basis to answer the question, indicating that the "group of employees working on a 11:00 p.m. to 7:00 a.m. work

schedule established by the employer" all are employed in the same job classification, and that other employees working different schedules are also employed in that same job classification, although at a different base wage than that specified in the proposal.

Thus understood, what this proposal would require the employer to do is to pay these overnight-shift employees a different base wage than others employed in the same job classification—a matter within the permissive subject of "shift differentials."

The definition of "base wages" we adopted in *Columbus* provides the answer to the question of this proposal's negotiability status. A base wage is the minimum (bottom) pay for those in a given job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay or performance pay. A shift differential is another example of additional pay which is not included within an employee's base wage. This proposal is consequently a permissive subject of bargaining.

Question 5

UE seeks a declaration that an Iowa Code section 20.22 arbitrator of an impasse involving a non-public-safety bargaining unit cannot refer to the existing collective agreement's provisions in order to determine the extent of any base wage increase proposed by a party, and further maintained during oral arguments that the arbitrator cannot receive other evidence concerning the existing base wages of the unit employees.

UE bases its claim that the arbitrator must be kept unaware of the base wages paid to employees under the existing collective agreement on an isolated portion of Iowa Code section 20.22. Subparagraph 20.22(7A)(*b*)(1) provides that for an arbitration involving a non-public-safety unit, the arbitrator shall not consider "past collective bargaining agreements between the parties or bargaining that led to such agreements."

UE's argument ignores other relevant provisions of section 20.22 concerning arbitrations involving non-public-safety units. Section 20.22(7A) and (9) provide, in relevant part:

> 7A. For an arbitration involving a bargaining unit that does not have at least thirty percent of members who are public safety employees, the following shall apply:
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> *a.* The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:
>
> (1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> (2) The interests and welfare of the public.
>
> (3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.
>
> *b.* The arbitrator shall not consider the following factors:
>
> (1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(2) The public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges, or to develop other sources of revenues.

. . .

9. *a.* The arbitrator shall select within fifteen days after the hearing the most reasonable offer, in the arbitrator's judgment, of the final offers on each impasse item submitted by the parties.

b. (1) However, for an arbitration involving a bargaining unit that does not have at least thirty percent of members who are public safety employees, with respect to any increase in base wages, the arbitrator's award shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(a) Three percent.

(b) A percentage equal to the increase in the consumer price index for all urban consumers for the midwest region, if any, as determined by the United States department of labor, bureau of labor statistics, or a successor index. . . . (Emphasis added.)

We are thus confronted with 20.22(7A)(*a*)(1) which unambiguously requires that the arbitrator consider and specifically address the comparison of the base wages (as well as hours and other conditions of employment) of the employees in the affected bargaining unit with those of other public employees (and with private sector employees to the extent adequate, applicable data is available) as well as 20.22(7A)(*b*)(1), providing that the arbitrator shall not consider past collective bargaining agreements between the parties or bargaining that led to such agreements. Overshadowing these provisions is the 20.22(9)(*b*)(1) prohibition against an arbitrator awarding a base wage increase of more than three percent or the percentage increase in the specified consumer price index, whichever is less.

Interpretation of a statute requires an assessment of the statute in its entirety, not just isolated words or phrases. *See, e.g., State v. Allen*, 708

N.W.2d 361, 366 (Iowa 2006). Courts will not read a statute in such a way that any provision will be rendered superfluous. *See, e.g., Thoms v. Iowa Pub. Employees' Retirement System,* 715 N.W.2d 7, 15 (Iowa 2006).

UE's argument that an arbitrator cannot know or be informed of the existing base wages of the unit's employees, either through examination of the existing collective agreement or through other evidence offered at the arbitration hearing, is based upon a reading of subparagraph 20.22(7A)(*b*)(1) in isolation, and yields a result which renders 20.22(7A)(*a*)(1) superfluous while enhancing the chances that an arbitrator's award will violate the 20.22(9)(*b*)(1) limitation on the size of a base wage award.

Iowa Code section 4.11 provides:

> **4.11 Conflicting amendments to same statutes—interpretation.**
> If amendments to the same statute are enacted at the same or different sessions of the general assembly, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment by the general assembly prevails.

Based upon the actual language employed by the legislature in H.F. 291, we are not convinced that 20.22(7A)(*b*)(1) is in fact in conflict with 20.22(7A)(*a*)(1). The former prohibits an arbitrator from considering "past collective bargaining agreements between the parties or bargaining that led to such agreements." UE's argument is premised on the idea that the current, existing collective agreement is a "past" agreement within the meaning of 20.22(7A)(*b*)(1).

The Iowa Code chapter 20 bargaining and impasse-resolution scheme contemplates that a successor collective agreement will be reached prior to the expiration of the parties' existing agreement. *See* § 20.17(10) (agreements between a state public employer and state employee organization shall be completed not later than March 15 of the year when the agreement is to become effective); § 20.17(11) (collective agreements for units including licensed teachers employed by school districts or area education agencies and for employees of community colleges shall be completed not later than May 31 of the year when the agreement is to become effective), and *City of Des Moines v. PERB*, 275 N.W.2d 753, 761 (Iowa 1979) (legislature intended bargaining and impasse procedures for political subdivisions be completed prior to the employer's certified budget submission date).

The collective agreement in effect at the time of a section 20.22 arbitration may thus be readily viewed as the "current" or "existing" collective agreement, rather than as a "past" agreement.[3] Such a reading of 20.22(7A)(*b*)(1) harmonizes and gives effect to all of the relevant provisions of sections 20.22.

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[3] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003) defines the adjective "past" as:

> **1a:** AGO <12 years ~> **b:** just gone or elapsed <for the ~ few months> **2:** having existed or taken place in a period before the present: BYGONE **3:** of, relating to, or constituting a verb tense that is expressive of elapsed time and that in English is usu. formed by internal vowel change (as in *sang*) or by the addition of a suffix (as in *laughed*) **4:** having served as a specified officer in an organization <~ president>.

But if the phrase "past collective bargaining agreements" is to be read as including the "current" agreement in effect at the time of the arbitration of a successor, we think the 20.22(7A)(*a*)(1) requirement that the arbitrator compare the base wages of the employees in the affected unit with those of other employees doing comparable work requires that we view that provision as a limited exception to the 20.22(7A)(*b*)(1) directive that the arbitrator not consider "past collective bargaining agreements between the parties." Such an interpretation facilitates, rather than frustrates, the legislature's obvious purpose that arbitrators consider and compare the base wages of the affected bargaining unit's employees with the base wages of other comparable employees.

The view of the statute UE advocates, which leaves the arbitrator blindfolded, without knowledge of the unit's base wages, places the arbitrator in a Catch-22 situation where it is impossible for the arbitrator to fulfill his or her 20.22(7A)(*a*)(1) responsibility. The legislature is presumed to have intended a reasonable result, not an absurd one such as is advanced by UE. *See, e.g., In re Estate of Thomann,* 649 N.W.2d 1, 4 (Iowa 2002).

We fully expect that parties engaged in arbitration proceedings in good faith will inform the arbitrator of the base wages, hours and conditions of employment then in effect for the subject bargaining unit, by stipulation or through the admission of relevant evidence, thus enabling the arbitrator to make the comparison required by 20.22(7A)(*a*)(1) while potentially rendering the arbitrator's resort to the existing collective agreement unnecessary. But

regardless of whether such a stipulation or evidence is presented to the arbitrator, our answer to UE's question is that an arbitrator may look to the existing collective bargaining agreement to determine the existing base wages (as well as the hours and other conditions of employment) of the bargaining unit's employees in order to comply with the requirements of 20.22(7A)(*a*)(1).

DATED at Des Moines, Iowa, this 29th day of June, 2017.

PUBLIC EMPLOYMENT RELATIONS BOARD

Michael G. Cormack, Chair

Jamie Van Fossen, Member

Mary T. Gannon, Member